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May 7, 2019

Via CM/ECF and Hand Delivery

Hon. Edgardo Ramos
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

RE: ***SEC v. Honig, et al., Case No. 1:18-cv-08175-ER (S.D.N.Y.)***

Dear Judge Ramos:

We represent Defendants Michael Brauser (“Mr. Brauser”) and Grander Holdings, Inc. (“Grander”), in the above-referenced action. We respectfully join the arguments of Co-Defendant Robert Ladd in his letter submitted on this date and the Discovery Plan attached thereto and provide the following further in support.

First, we want to emphasize that Plaintiff Securities and Exchange Commission (“SEC”) undertook a two-year investigation before filing this action in September 2018 without affording Mr. Brauser or Grander with any due process, including notice of the investigation or a Wells notice, notwithstanding the fact that there were no exigent circumstances justifying such a departure from the SEC’s longstanding practice.

The second point we wish to highlight pertains to the SEC’s proposal to delay discovery including document productions pursuant to Fed. R. Civ. P. 34 until at least September 3, 2019, or after the Defendants’ Motions to Dismiss will be fully briefed. According to the SEC, it should not be burdened with producing documents while responding to the Motions. This proposal is unacceptable, and the SEC’s concerns are unwarranted. Moreover, the SEC has failed to set forth any basis for good cause for granting a limited stay of discovery in this case. *See O’Sullivan v. Deutsche Bank AG*, 2018 U.S. Dist. LEXIS 70418, *13-14 (S.D.N.Y. Apr. 26, 2018) (citing factors for consideration for granting stay of discovery).

Most of the document production in this matter should be contained in the SEC’s investigative file. The SEC Enforcement Manual requires the SEC Staff to keep and maintain documents obtained in its investigation in a matter separate and apart from the Staff’s notes, emails or any other documents, and original document should be copied or imaged for storage.

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Enforcement Manual Section 3.2.9. Simply stated, the SEC's production of its Investigative File should require no more than a few keystrokes for the SEC to comply with its obligations under Fed. R. Civ. P. 26(a). *See id.* Section 3.2.9.4 ("Federal Rule of Civil Procedure 26(a)(1) requires the SEC to make certain disclosures at the onset of litigation"). Any demands on the SEC Staff's time and resources should be relatively minimal, if almost nonexistent.

Third, the SEC's proposal for authority to take Defendants' depositions before producing any documents pursuant to Fed. R. Civ. P. 34 is also unacceptable. The Court should recall that the SEC enjoyed two years of almost completely-unfettered access to discovery tools, including administrative subpoenas permitting the SEC to take testimony and obtain documents. Given that advantage, the SEC has expressed no rationale why it needs to conduct party depositions with this kind of urgency while delaying document production. Mr. Brauser and Grander aver that Mr. Ladd's proposal to set aside time in February 2020 would be more efficient and fruitful for this proceeding.

Thank you for Your Honor's consideration of this matter. Defendants Brauser and Grander respectfully request that this Court enter an Order rejecting the SEC's Discovery Plan and accepting Defendant Ladd's Discovery Plan.

Sincerely,

By: /s/ James D. Sallah

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